

[COMMITTEE PRINT]

SEPTEMBER 9, 1997

**[Showing the text of the amendment reported by the Committee on
the Judiciary on May 22, 1997]**

105TH CONGRESS
1ST SESSION

H. R. 695

To amend title 18, United States Code, to affirm the rights of United States persons to use and sell encryption and to relax export controls on encryption.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1997

Mr. GOODLATTE (for himself, Ms. LOFGREN, Mr. DELAY, Mr. BOEHNER, Mr. COBLE, Mr. SENSENBRENNER, Mr. BONO, Mr. PEASE, Mr. CANNON, Mr. CONYERS, Mr. BOUCHER, Mr. GEKAS, Mr. SMITH of Texas, Mr. INGLIS of South Carolina, Mr. BRYANT, Mr. CHABOT, Mr. BARR of Georgia, Ms. JACKSON-LEE of Texas, Ms. WATERS, Mr. ACKERMAN, Mr. BAKER, Mr. BARTLETT of Maryland, Mr. CAMPBELL, Mr. CHAMBLISS, Mr. CUNNINGHAM, Mr. DAVIS of Virginia, Mr. DICKEY, Mr. DOOLITTLE, Mr. EHLERS, Mr. ENGEL, Ms. ESHOO, Mr. EVERETT, Mr. EWING, Mr. FARR of California, Mr. GEJDENSON, Mr. GILLMOR, Mr. GOODE, Ms. NORTON, Mr. HORN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. SAM JOHNSON of Texas, Mr. KOLBE, Mr. MCINTOSH, Mr. McKEON, Mr. MANZULLO, Mr. MATSUI, Mr. MICA, Mr. MINGE, Mr. MOAKLEY, Mr. NETHERCUTT, Mr. PACKARD, Mr. SESSIONS, Mr. UPTON, Mr. WHITE, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MAY 22, 1997

Reported from the Committee on the Judiciary with an amendment
Referral to the Committee on International Relations extended for a period
ending not later than July 11, 1997

JUNE 26, 1997

Referral to the Committee on International Relations extended for a period
ending not later than July 25, 1997

Referred to the Committees on Commerce, National Security, and the Permanent Select Committee on Intelligence for a period ending not later than September 5, 1997, for consideration of such provisions of the bill and amendment reported by the Committee on the Judiciary as fall within the jurisdiction of those committees pursuant to clause 1(e) and (k), rule X and rule XLVIII, respectively

JULY 25, 1997

Reported from the Committee on International Relations with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 12, 1997]

A BILL

To amend title 18, United States Code, to affirm the rights
of United States persons to use and sell encryption and
to relax export controls on encryption.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Security and Freedom*
5 *Through Encryption (SAFE) Act”.*

6 **SEC. 2. SALE AND USE OF ENCRYPTION.**

7 *(a) IN GENERAL.—Part I of title 18, United States*
8 *Code, is amended by inserting after chapter 123 the follow-*
9 *ing new chapter:*

1 **“CHAPTER 125—ENCRYPTED WIRE AND**
2 **ELECTRONIC INFORMATION**

“2801. Definitions.

“2802. Freedom to use encryption.

“2803. Freedom to sell encryption.

“2804. Prohibition on mandatory key escrow.

“2805. Unlawful use of encryption in furtherance of a criminal act.

3 **“§ 2801. Definitions**

4 *“As used in this chapter—*

5 *“(1) the terms ‘person’, ‘State’, ‘wire commu-*
6 *nication’, ‘electronic communication’, ‘investigative or*
7 *law enforcement officer’, and ‘judge of competent ju-*
8 *risdiction’ have the meanings given those terms in*
9 *section 2510 of this title;*

10 *“(2) the terms ‘encrypt’ and ‘encryption’ refer to*
11 *the scrambling of wire communications, electronic*
12 *communications, or electronically stored information,*
13 *using mathematical formulas or algorithms in order*
14 *to preserve the confidentiality, integrity, or authentic-*
15 *ity of, and prevent unauthorized recipients from*
16 *accessing or altering, such communications or infor-*
17 *mation;*

18 *“(3) the term ‘key’ means the variable informa-*
19 *tion used in a mathematical formula, code, or algo-*
20 *rithm, or any component thereof, used to decrypt wire*
21 *communications, electronic communications, or elec-*
22 *tronically stored information, that has been*
23 *encrypted; and*

1 “(4) the term ‘United States person’ means—

2 “(A) any United States citizen;

3 “(B) any other person organized under the
4 laws of any State, the District of Columbia, or
5 any commonwealth, territory, or possession of
6 the United States; and

7 “(C) any person organized under the laws
8 of any foreign country who is owned or con-
9 trolled by individuals or persons described in
10 subparagraphs (A) and (B).

11 **“§ 2802. Freedom to use encryption**

12 “Subject to section 2805, it shall be lawful for any per-
13 son within any State, and for any United States person
14 in a foreign country, to use any encryption, regardless of
15 the encryption algorithm selected, encryption key length
16 chosen, or implementation technique or medium used.

17 **“§ 2803. Freedom to sell encryption**

18 “Subject to section 2805, it shall be lawful for any per-
19 son within any State to sell in interstate commerce any
20 encryption, regardless of the encryption algorithm selected,
21 encryption key length chosen, or implementation technique
22 or medium used.

23 **“§ 2804. Prohibition on mandatory key escrow**

24 “(a) PROHIBITION.—No person in lawful possession of
25 a key to encrypted communications or information may be

1 *required by Federal or State law to relinquish to another*
2 *person control of that key.*

3 “(b) *EXCEPTION FOR ACCESS FOR LAW ENFORCEMENT*
4 *PURPOSES.*—Subsection (a) shall not affect the authority
5 of any investigative or law enforcement officer, or any
6 member of the intelligence community as defined in section
7 3 of the National Security Act of 1947 (50 U.S.C. 401a),
8 acting under any law in effect on the effective date of this
9 chapter, to gain access to encrypted communications or in-
10 formation.

11 **“§2805. Unlawful use of encryption in furtherance of**
12 ***a criminal act***

13 “Any person who, in the commission of a felony under
14 a criminal statute of the United States, knowingly and will-
15 fully encrypts incriminating communications or informa-
16 tion relating to that felony with the intent to conceal such
17 communications or information for the purpose of avoiding
18 detection by law enforcement agencies or prosecution—

19 “(1) in the case of a first offense under this sec-
20 tion, shall be imprisoned for not more than 5 years,
21 or fined in the amount set forth in this title, or both;
22 and

23 “(2) in the case of a second or subsequent offense
24 under this section, shall be imprisoned for not more

1 *than 10 years, or fined in the amount set forth in this*
2 *title, or both.”.*

3 **(b) CONFORMING AMENDMENT.**—*The table of chapters*
4 *for part I of title 18, United States Code, is amended by*
5 *inserting after the item relating to chapter 123 the following*
6 *new item:*

“125. Encrypted wire and electronic information 2801”.

7 **SEC. 3. EXPORTS OF ENCRYPTION.**

8 **(a) AMENDMENT TO EXPORT ADMINISTRATION ACT OF**
9 *1979.*—*Section 17 of the Export Administration Act of*
10 *1979 (50 U.S.C. App. 2416) is amended by adding at the*
11 *end thereof the following new subsection:*

12 **“(g) COMPUTERS AND RELATED EQUIPMENT.—**

13 **“(1) GENERAL RULE.**—*Subject to paragraphs*
14 *(2), (3), and (4), the Secretary shall have exclusive*
15 *authority to control exports of all computer hardware,*
16 *software, and technology for information security (in-*
17 *cluding encryption), except that which is specifically*
18 *designed or modified for military use, including com-*
19 *mand, control, and intelligence applications.*

20 **“(2) ITEMS NOT REQUIRING LICENSES.**—*No vali-*
21 *dated license may be required, except pursuant to the*
22 *Trading With The Enemy Act or the International*
23 *Emergency Economic Powers Act (but only to the ex-*
24 *tent that the authority of such Act is not exercised to*

1 *extend controls imposed under this Act), for the export*
2 *or reexport of—*

3 “(A) *any software, including software with*
4 *encryption capabilities—*

5 “(i) *that is generally available, as is,*
6 *and is designed for installation by the pur-*
7 *chaser; or*

8 “(ii) *that is in the public domain for*
9 *which copyright or other protection is not*
10 *available under title 17, United States*
11 *Code, or that is available to the public be-*
12 *cause it is generally accessible to the inter-*
13 *ested public in any form; or*

14 “(B) *any computing device solely because it*
15 *incorporates or employs in any form software*
16 *(including software with encryption capabilities)*
17 *exempted from any requirement for a validated*
18 *license under subparagraph (A).*

19 “(3) *SOFTWARE WITH ENCRYPTION CAPABILI-*
20 *TIES.—The Secretary shall authorize the export or re-*
21 *export of software with encryption capabilities for*
22 *nonmilitary end uses in any country to which exports*
23 *of software of similar capability are permitted for use*
24 *by financial institutions not controlled in fact by*

1 *United States persons, unless there is substantial evi-*
2 *dence that such software will be—*

3 *“(A) diverted to a military end use or an*
4 *end use supporting international terrorism;*

5 *“(B) modified for military or terrorist end*
6 *use; or*

7 *“(C) reexported without any authorization*
8 *by the United States that may be required under*
9 *this Act.*

10 *“(4) **HARDWARE WITH ENCRYPTION CAPABILI-***
11 ***TIES.**—The Secretary shall authorize the export or re-*
12 *export of computer hardware with encryption capa-*
13 *bilities if the Secretary determines that a product of-*
14 *fering comparable security is commercially available*
15 *outside the United States from a foreign supplier,*
16 *without effective restrictions.*

17 *“(5) **DEFINITIONS.**—As used in this subsection—*

18 *“(A) the term ‘encryption’ means the scram-*
19 *bling of wire or electronic information using*
20 *mathematical formulas or algorithms in order to*
21 *preserve the confidentiality, integrity, or authen-*
22 *ticity of, and prevent unauthorized recipients*
23 *from accessing or altering, such information;*

24 *“(B) the term ‘generally available’ means,*
25 *in the case of software (including software with*

1 *encryption capabilities), software that is offered*
2 *for sale, license, or transfer to any person with-*
3 *out restriction, whether or not for consideration,*
4 *including, but not limited to, over-the-counter re-*
5 *tail sales, mail order transactions, phone order*
6 *transactions, electronic distribution, or sale on*
7 *approval;*

8 “(C) the term ‘as is’ means, in the case of
9 *software (including software with encryption ca-*
10 *pabilities), a software program that is not de-*
11 *signed, developed, or tailored by the software*
12 *publisher for specific purchasers, except that such*
13 *purchasers may supply certain installation pa-*
14 *rameters needed by the software program to*
15 *function properly with the purchaser’s system*
16 *and may customize the software program by*
17 *choosing among options contained in the soft-*
18 *ware program;*

19 “(D) the term ‘is designed for installation
20 *by the purchaser’ means, in the case of software*
21 *(including software with encryption capabilities)*
22 *that—*

23 “(i) the software publisher intends for
24 *the purchaser (including any licensee or*
25 *transferee), who may not be the actual pro-*

1 *gram user, to install the software program*
2 *on a computing device and has supplied the*
3 *necessary instructions to do so, except that*
4 *the publisher may also provide telephone*
5 *help line services for software installation,*
6 *electronic transmission, or basic operations;*
7 *and*

8 “(ii) *the software program is designed*
9 *for installation by the purchaser without*
10 *further substantial support by the supplier;*

11 “(E) *the term ‘computing device’ means a*
12 *device which incorporates one or more micro-*
13 *processor-based central processing units that can*
14 *accept, store, process, or provide output of data;*
15 *and*

16 “(F) *the term ‘computer hardware’, when*
17 *used in conjunction with information security,*
18 *includes, but is not limited to, computer systems,*
19 *equipment, application-specific assemblies, mod-*
20 *ules, and integrated circuits.”.*

21 (b) *CONTINUATION OF EXPORT ADMINISTRATION*
22 *ACT.—For purposes of carrying out the amendment made*
23 *by subsection (a), the Export Administration Act of 1979*
24 *shall be deemed to be in effect.*

1 **SEC. 4. EFFECT ON LAW ENFORCEMENT ACTIVITIES.**

2 (a) *COLLECTION OF INFORMATION BY ATTORNEY GEN-*
3 *ERAL.—The Attorney General shall compile, and maintain*
4 *in classified form, data on the instances in which*
5 *encryption (as defined in section 2801 of title 18, United*
6 *States Code) has interfered with, impeded, or obstructed the*
7 *ability of the Department of Justice to enforce the criminal*
8 *laws of the United States.*

9 (b) *AVAILABILITY OF INFORMATION TO THE CON-*
10 *GRESS.—The information compiled under subsection (a),*
11 *including an unclassified summary thereof, shall be made*
12 *available, upon request, to any Member of Congress.*